HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

R.S.A No.4382 of 2003
Date of decision : 8.5..2007

Shardhalu Bhagat Ram Assra .....Appellant

versus

Ram, Nath son of Sant Ram and others .....Respondents

CORAM : HON'BLE MR. JUSTICE HEMANT GUPTA.

Present : Mr.P.K.Gupta, Advocate for the appellant.
Mr.K.S.Cheema, Advocate for respondent No.1.

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JUDGMENT

HEMANT GUPTA, J.

The plaintiff is in second appeal aggrieved against the judgment and decree passed by the Courts below whereby suit for declaration to the effect that the plaintiff is the sole Managing Committee of Bhagat Ram Assra Kutia, as shown red in the site plan attached with the plant, was dismissed.

In the plaint, it is stated that Ananta, owner of the property, gifted the land measuring 5 marla vide gift deed dated 25.8.1958, Exhibit P-2 to Ram Assra and another part of the land measuring 5 marlas vide gift deed dated 17.2.1961, Exhibit P-3. The plaintiff has set up a case that the said land was gifted to late Ram Assra and the possession was delivered on the same day to father in-law of Gian Chand, present President of the Society. The plaintiff has set up a case that said Ram Assra built a Mandir in the name of Baba Balak Nath and a Murti of Baba Balak Nath was installed in the said Mandir.

On the other hand, it is the case of the defendants that the land measuring 13 marlas was gifted to the defendants by the registered gift deed dated 12.12.1997 and the said gift was accepted by Shankar Dass who was follower of Sidh Baba Balak Nath and, thereafter, Mandir was constructed on the said land.

Both the Courts below have dismissed the suit holding that the gift deeds relied upon by the plaintiff are unregistered documents and these gift deeds were not accepted by the Donee. It does not bear the signatures of Ram Assra in token of its acceptance. It is also not mentioned in these gift deeds whether the possession was delivered to anybody or not. It was also found that the subject matter of the gift was not certain as no khasra number/detail of the property was disclosed.

The argument that the gift deeds are not required to be registered as such gift deeds were of the property of the value less than 100/-, is not tenable. Section 123 of the Transfer of Property Act, 1882 (hereafter referred to as the Act) contemplates that the gift of immovable property must be effected by a registered document attested by atleast two witnesses. Since a particular mode of execution of the gift deed has been provided under the Act, the provisions contained in the Registration Act, 1908 providing that the documents of value less than 100/- are not required to be registered, is not available to the appellant. Even otherwise, non registration of a document is one of the reason given by the learned First Appellate Court. It has been found by the learned First Appellate Court that there is no evidence of acceptance of gifts by Donee. As per the appellant, it was the gift to Ram Assra. However, there is no

evidence to the effect that Ram Assra accepted the gift. In fact, in the present appeal, it has been argued that the gift has been accepted by the followers of Baba Balak Nath Mandir. Such was not the case set up by the appellant. Learned counsel for the appellant could not refer to any evidence to the effect that the gift was accepted by Ram Assra and, therefore, the arguments that the gift was accepted by Ram Assra is neither factually nor legally tenable.

The other argument raised by learned counsel for the appellant is that the plaintiff is entitled to decree for injunction on the basis of possession, is again not tenable. The plaintiff has sought a decree for injunction on the basis of a title. Once the plaintiff has failed to prove the gift, the possession following from such gift cannot be accepted in favour of the appellant.

Thus, in view of the above, I am of the opinion that the findings recorded by the Courts below cannot be said to be suffering from any patent illegality or irregularity which may give rise to any substantial question of law for consideration of this Court in second appeal.

The appeal stands dismissed.

(HEMANT GUPTA)
JUDGE

May 8, 2007
**mohinder*